

US EPA ARCHIVE DOCUMENT

Clean Water Act Permitting of Discharges from Pesticide Applications

**Pesticide General Permit (PGP)
Draft Final Version Pre-published April 21, 2011**

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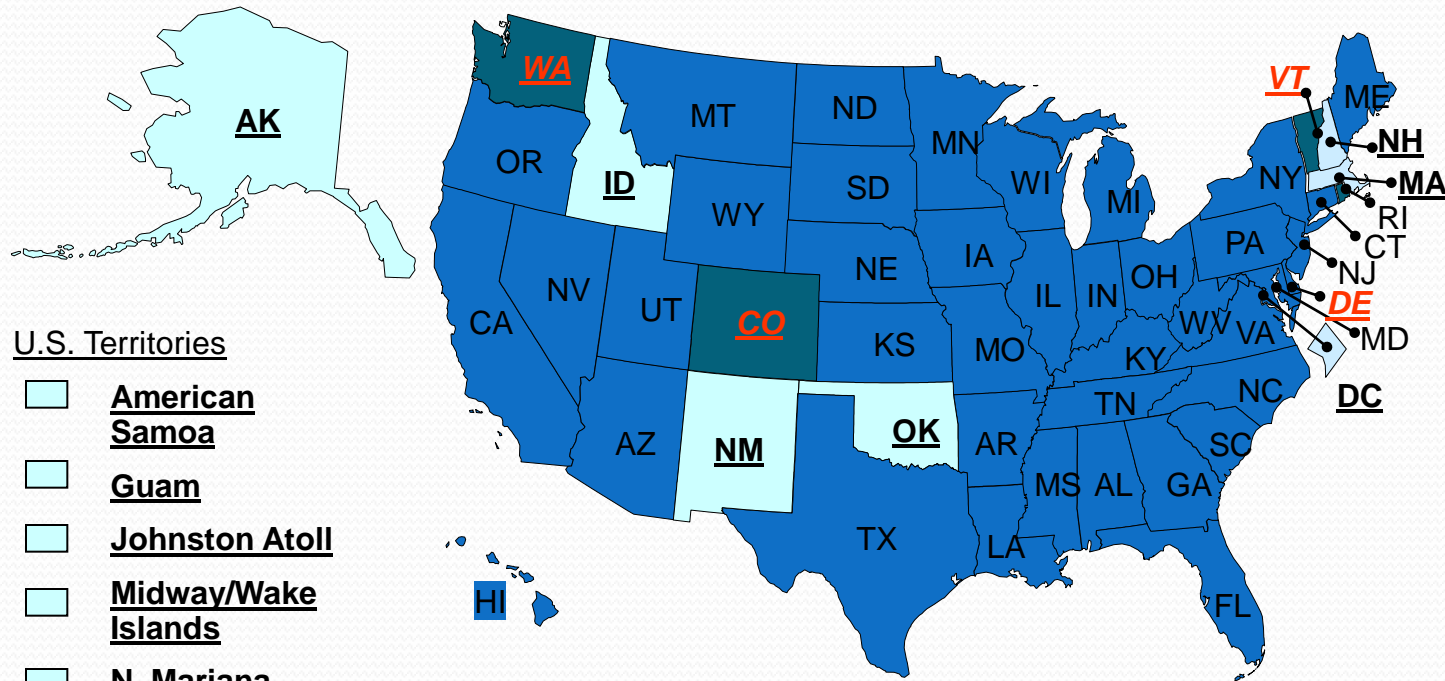


Posting of EPA's Draft Final PGP

- EPA's draft final Pesticide General Permit (PGP), **posted online** by EPA on April 1, 2011:
 - Has concluded interagency review by the Office of Management and Budget.
 - Does not contain any additional or revised conditions that may result from ongoing Endangered Species Act (ESA) consultation.
 - Is not considered a final Agency action.



NPDES Program Authorizations (PGP)



U.S. Territories

-  American Samoa
-  Guam
-  Johnston Atoll
-  Midway/Wake Islands
-  N. Mariana Islands
-  Puerto Rico
-  Virgin Islands

State NPDES Program Status for Pesticides

-  Authorized (State permits)
-  Unauthorized (EPA permits)
-  *Authorized but excludes federal facilities*

 **Note: EPA also permits activities on Indian Country lands.**

Requests for Extension

- EPA's request for a second extension was granted by the **6th Circuit Court resulting in a stay the mandate from April 9, 2011 until October 31, 2011.**
- This extension will allow time for:
 - EPA to engage in consultation under the Endangered Species Act (ESA)
 - Complete development of an electronic Notice of Intent (NOI) database
 - Authorized states to finish developing their state permits
 - Permitting authorities to provide additional outreach to stakeholders on pesticide permit requirements



Expected Timeline

- EPA's revised timeline under its extension request:
 - Draft ESA-related permit conditions (if necessary) – **May 6, 2011**
 - 2nd round OMB review – **May 9, 2011 to June 9, 2011**
 - Publish final PGP in Federal Register - **July 30, 2011**
 - Permit Effective Date - **October 31, 2011**
- If ESA consultation significantly changes EPA's PGP, a 30-day public comment period may be necessary



What the PGP does not Cover

- Activities Outside the Scope of the PGP:
 - Off target spray drift
 - Discharges to waters impaired for the pesticide being discharged
- Agricultural runoff and irrigation return flows continue to be exempt from permitting under the CWA.
- The PGP also does not cover, nor is permit coverage required for, pesticide applications that do not result in a point source discharge to waters of the U.S. such as terrestrial applications for controlling pests on agricultural crops, forest floors, or range lands.



Draft Final PGP Contents

Contents

- Scope
- Notice of Intent (NOI)
- Effluent Limits
 - Technology-Based
 - Water Quality-Based
- Site Monitoring
- Pesticide Discharge Management Plan
- Corrective Action
- Recordkeeping and Annual Reporting



Draft Final PGP Contents

Summary of Changes Since Proposed PGP

Significant Overarching Changes:

- Separated permit responsibilities for applicators and decision-makers.
- Permit requirements not exclusively linked to NOI as was done in the draft PGP.
- Small entities meeting NOI obligation can prepare a pesticide discharge elimination worksheet in lieu of developing a PDMP, submitting annual reports, and retaining detailed records.



Draft Final PGP Contents

Summary of Changes Since Proposed PGP

Part 1: Coverage under this Permit

- 1.1.1 Eligibility generally the same, revised slightly to reflect:
- coverage of fungi, bacteria, and other microorganisms, and
 - covering basically any pest control within a water of the U.S.
- 1.1.2.2 Covering discharges to Tier 3 waters that either do not degrade water quality or that only degrade water quality on a short-term or temporary basis.
- 1.2.1 Requiring electronic submission of NOIs unless a waiver is obtained.
Clarifying that R&D activities and for-hire applicators do not have to submit NOIs.
- 1.2.2 NOIs required for:
- all Tier 3 discharges
 - all federal and state agencies with pest control responsibility
 - all pest control districts
 - all irrigation control districts
 - others that exceed an annual treatment area threshold
- Threshold for mosquitoes and forests increased from 640 to 6400 acres (and only includes adulticides for mosquitoes).
- Threshold for waterbodies increased from 20 to 80 acres.



Draft Final PGP Contents

Summary of Changes Since Proposed PGP (cont.)

1.2.2

Calculation of areas revised:

- Mosquitoes = total treatment area, counting multiple treatments multiple times.
- Weeds and animals = treatment area, counting multiple treatments just once for area treated.

Will provide for submission of NOI changes if treatment area changes, or if new Tier 3 water discharge is desired.

Part 2: Technology-based Effluent Limitations

2.1

Applicators: Similar concept but revised language:

- Effluent Limitations that apply to applicators re-worded for clarification from, “use the optimal amount of pesticide and frequency of pesticide application,” to “use only the amount of pesticide and frequency of pesticide application necessary.”

2.2

Decision-makers: Generally the same except:

- Now requiring identification of target pest rather than target species.
- Eliminating requirement to consider pest resistance as part of pest management measures (acknowledging challenges with doing so, for many, as well as with the need to do so, by others).



Draft Final PGP Contents

Summary of Changes Since Proposed PGP (cont.)

Part 3: Water Quality-based Effluent Limitations and Part 4: Site Monitoring

3.0, 4.0 Generally the same.

Part 5: Pesticide Discharge Management Plan

5.0 No PDMP required for entities initiating work in response to declared pest emergency. Other requirements generally the same.

Part 6: Corrective Action

6.4 Clarified that, for adverse incidents, only one operator needs to notify EPA provided that reports are shared with the other operators of the discharge.

6.5.2 Adverse incident reports due in 30 days rather than 5 days.

Part 7: Recordkeeping and Annual Reporting

7.3 Removed recordkeeping requirement for operators to retain a copy of their permit.

Removed recordkeeping requirement for equipment maintenance, cleaning, and repair. Still requires certain operators to document equipment calibration activities.



Draft Final PGP Contents

Summary of Changes Since Proposed PGP (cont.)

- 7.3 Added a requirement for decision-makers who implement Pest Management Measures, to keep documentation regarding their performance of visual monitoring.

Part 9: State, Territory, and Tribe-specific Requirements

Final permit will contain certain additional requirements as established through CWA §401 certification process.

Additional ESA-related Provisions

Final permit will contain certain additional requirements to protect certain federally-listed resources.

Appendix A: Definitions

Decision-maker, applicator, operator, for-hire applicator – relationship to permit requirements.

Large entity and small entity – for establishing two sets of permit requirements.



Pesticides Permit Decision Tool

EPA has developed an interactive tool for potential permittees to guide them step-by-step through questions to help them:

- Determine if an NPDES permit will be needed for their pesticide application when the requirement for a permit takes effect;
- For those who determine they need a permit, determine if they are eligible for coverage under EPA's PGP; and
- If they are eligible for coverage under EPA's PGP, understand what their requirements will be under the PGP.



Example: Do I need a Permit?

- This stage of the tool will help Operators who may be unsure of whether they need an NPDES permit.
- Left: The responses displayed indicate that all criteria for needing a permit have been met. Selecting opposite answer options to this subset of questions would have resulted in a message indicating that the Operator does not need an NPDES permit.
- Questions appear one by one and remain on the screen so that permittees can see clearly how they arrive at a final outcome.

Do I need an NPDES permit for my pesticide applications?

Will you be applying or hiring someone to apply [pesticides](#) that will result in a discharge to [waters of the U.S. \(as defined in Appendix A of the permit\)](#) on or after October 31, 2011?

☒ Yes ☐ No



Is the pesticide that you will apply a [biological pesticide](#), or a [chemical pesticide](#) that will leave a residue?

☒ Yes ☐ No



Will your discharges to [waters of the U.S.](#) be solely a result of agricultural stormwater runoff or irrigation return flow?

☐ Yes ☒ No



You need an NPDES permit.

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Example: Eligibility for the PGP

- The stage of the tool will help Operators determine if they meet the **eligibility criteria for EPA's PGP**.
- Left: The responses displayed indicate that eligibility criteria for **EPA's PGP have been met**. Selecting opposite answer options to this subset of questions would have resulted in a message indicating that the Operator may need to apply for an individual permit or a state NPDES permit if applying outside of U.S. **EPA's coverage areas**.

I need an NPDES permit for my pesticide application. Am I eligible for coverage under EPA's NPDES Pesticide General Permit (PGP)?

Will you be applying [pesticides](#) in any of these locations:

1. Alaska, Idaho, Massachusetts, New Hampshire, New Mexico, Oklahoma, or Washington D.C.;
2. any U.S. territory except Virgin Islands;
3. an Indian Country land listed on http://www.epa.gov/npdes/pubs/pgp_geographic_coverage.pdf; or
4. a federal facility in Colorado, Delaware, Vermont, or Washington?

☒ Yes ☐ No



Will your pesticide application be for one of the following pesticide use patterns? (See [Part 1.1.1](#) of the permit for further detail.)

- a. Mosquito and Other Flying Insect Pest Control
- b. Weed and Algae Control
- c. Animal Pest Control
- d. Forest Canopy Pest Control

☒ Yes ☐ No



Will your discharge from the application of pesticides be:

1. to waters identified as impaired by a substance which either is an active ingredient in that pesticide or is a degradate of such an active ingredient ([Part 1.1.2.1](#));
2. to a Tier 3 water, except to restore or maintain water quality or to protect public health that either does not degrade water quality or only degrades water quality on a short-term or temporary basis ([Part 1.1.2.2](#)); or
3. a discharge that is previously or currently covered by another NPDES permit ([Part 1.1.2.3](#))?

☐ Yes ☒ No



You may be eligible for coverage under EPA's NPDES Pesticide General Permit (PGP).

(See [Part 1.1](#) of the permit for further eligibility details).

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Example: PGP Requirements

- This stage of the tool will help Operators understand their requirements under EPA's PGP.
- Left: A small mosquito control district serving a population of 5,000 would see a display similar to this after having answered the questions presented in the tool.
- The permit requirements displayed at the end of this series of questions are hyperlinks; clicking on any link will display the relevant portion of the PGP where the requirement is found.

I need an NPDES permit for my pesticide application and I am eligible for coverage under EPA's NPDES Pesticide General Permit (PGP). What is required of me under the PGP?

Which Are You?

- ☒ A decision-maker ☐ A for-hire applicator



Are you a federal or state agency with the responsibility:

1. to control mosquitoes for public health, nuisance control or animal welfare;
2. to control weeds and algae;
3. to control animals for public health, nuisance control or resource management; or
4. to control forest canopy pests?

- ☐ Yes ☒ No



Are you a

1. mosquito control district or similar pest control district; or
2. irrigation and weed control district or similar pest control district?

- ☒ Yes ☐ No



Are you a small entity as defined in Appendix A of the permit?

- ☒ Yes ☐ No



Your requirements are:

- [Submit a Notice of Intent \(NOI\), Part 1.2.2](#)
- [Technology-Based Effluent Limitations, Part 2.2: Decision-makers' Responsibilities for all Decision-makers](#)
- [Technology-Based Effluent Limitations, Part 2.2: Decision-makers' Responsibilities for Decision-makers Required to Submit NOIs](#)
- [Water Quality, Part 3](#)
- [Monitoring, Part 4](#)
- [Corrective Action, Part 6](#)
- [Recordkeeping, Parts 7.1, 7.3, and 7.5](#)
- [Permit Conditions Applicable to Specific States \(including Territories\) and Indian Country Lands, Part 9](#)
- [Standard Permit Conditions, Appendix B](#)

If you are self-applying a pesticide, your requirements also include:

- [Technology-Based Effluent Limitations, Part 2.1: Applicators' Responsibilities](#)

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Additional Considerations

- H.R. 872 passed in the U.S. House of Representatives on March 31, 2011 to amend FIFRA and CWA to not require NPDES permits for discharges of pesticides.
- A similar bill was referred to the Senate Agriculture Committee on April 4, 2011.



For More Information NPDES PGP Website

For more information:
www.epa.gov/npdes/pesticides

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